HONOURABLE SRI JUSJTICE R. SUBHASH REDDY

WRIT PETITION No. 1295 OF 2006:

Between

Yele Malleshappa Kannada High School,
Adoni, Kurnool District, rep. by its Secretary
& Correspondent Yale Malleshappa

….Petitioner

and

Government of Andhra Pradesh,
Rep. by its Secretary, School Education Department,
Secretariat, Hyderabad, and ors.

….Respondents.

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 1295 OF 2006

ORDER:

This Writ Petition is filed seeking Writ of Mandamus to declare the action of the respondents in not permitting the petitioner to fill up 2 posts of Secondary Grade Teachers (Telugu), one post of Secondary Grade Teacher (Kannada), Record Assistant, Physical Education Teacher, School Assistant (Maths) and Telugu Pandit Grade-II in spite of according permission vide orders dated 9-7-2003 and 6-11-2003 and, the action of the fourth respondent in allotting Secondary Grade Teacher (Telugu) and Secondary Grade Teacher (Kannada) instead of allowing the management to make selection for the said posts as illegal and arbitrary

The petitioner-school was established in the year 1947 and is having permanent recognition to run the classes from VI to X. There

are about more than 1500 students studying in the school and altogether 47 posts in the petitioner-school were admitted to grant-in-aid. It is stated that two posts of Secondary Grade Teachers (Telugu), one post of Record Assistant, One post of Telugu Pandit Grade-II, one post of Secondary Grade Teacher (Kannada), one post of School Assistant (Maths) and One post of Physical Education Teacher are vacant at present in the petitioner-school and the said vacancies arose during the period from 1-7-1997 to 1-7-2002. When the said vacancies were not permitted to be filled up, the petitioner filed Writ Petition No. 22685 of 2002 seeking directions to the respondents to permit the petitioner to fill up the vacancies. At that stage, order dated 9-7-2003 was passed by the fourth respondent permitting the petitioner to fill up the vacancies, except the post of Telugu Pandit Grade-II and School Assistant (Maths). Further orders are issued on 6-11-2003, by which, even the post of School Assistant (Maths) was permitted to be filled up. By virtue of the orders dated 9-7-2003 and 6-11-2003 passed by the fourth respondent, the petitioner management was permitted to fill up all the posts except the post of Telugu Pandit Grade-II. As per the Rules framed under the A.P. Education Act, a nominee of the department has to be deputed to the Selection Committee. When such nominee was not deputed for constitution of the Selection Committee, the petitioner again approached this Court in Writ Petition No.17759 of 2003 and obtained directions to fill up the posts as per the orders issued by the fourth respondent dated 9-7-2003 and 6-11-2003. Subsequently, a nominee was deputed by the fourth respondent, who had issued notice dated 7-11-2005 for fixing the date for written and oral tests as 28-11-2005. But however, even before the said date, the selections were postponed on the ground that the respondents have taken up the proceedings for rationalization of the staff working in

various schools. Thereafter, the fourth respondent issued proceedings No. Rc.No.1/Rationalization/B.6/2005 dated 19-11-2005, allotting two Secondary Grade Teachers (Telugu) and one Secondary Grade Teacher (Kannada) to the petitioner school, on the ground that they were found surplus in other schools. It is stated that though the Secondary Grade Teachers in Telugu and Kannada were allotted to the petitioner-school, but, however, they did not join in the petitioner-school in view of the orders obtained by the managements of the schools from where they were posted to the petitioner-school. It is the grievance of the petitioner that as the vacancies are not filled up for the last several years, it resulted in dislocation of work in the petitioner-school and there are no valid reasons in not allowing the petitioner-school to fill up vacancies in spite of the orders dated 9.7.2003 and 6.11.2003 issued by the competent authority permitting the petitioner to fill up the vacancies.

Counter affidavit is filed by the fourth respondent-District Educational Officer, Kurnool. While generally denying the various allegations of the petitioner, it is stated that the petitioner-management was permitted to fill up the vacant posts by duly verifying the need and justification in proceedings Rc.No.13645/B3/02, dated 22-5-2003 and 6-11-2003. It is further stated that as per the orders passed in the earlier Writ Petition No. 17759 of 2003, dated 27-4-2004, proceedings in Rc.No.13644/A6/2002/B6/2005, dated 13-8-2005 were issued providing a departmental nominee to ensure reservations to various posts after obtaining necessary orders from the Government in Memo No.14329/P.S-1/2005, dated 12-8-2005. It is also stated that as some staff members were excess in some of the schools, rationalization was taken up as per the guidelines issued by the Government in

G.O.Ms.No. 103, Education, dated 5-8-2005, for allotment of surplus man power to the needy schools, which are running with more strength and less teachers with a view to mitigate additional financial burden to the State Exchequer. It is stated that in view of the decision of the Government for rationalization, two Secondary Grade Teachers (Telugu) and one Secondary Grade Teacher (Kannada) were allotted to the petitioner school, which were found surplus in other schools.

Heard Sri P.Gangaiah Naidu, learned Senior Counsel appearing for the petitioner and the learned Government for Higher Education appearing for the respondents.

It is submitted by Sri P.Gangaiah Naidu, learned Senior Counsel appearing for the petitioner that in spite of the orders issued by the competent authority, the petitioner school is not permitted to fill up the vacancies for the last several years. It is submitted that as much as the orders were already issued on 9-7-2003 and 6-11-2003, it is not open for the respondents to allot any teachers to the petitioner school from other schools on the ground that they were found surplus. It is also submitted that the very procedure followed for rationalization of staff was not accepted by the Division Bench of this Court in Writ Appeal No. 1578 of 2005 and Batch, and, in that view of the matter, the management of the petitioner school is entitle to fill up all the vacancies without any further loss of time, as the said vacancies are existing for the lost several years.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that as the posts in the petitioner school were admitted to grant in aid, and, the entire expenditure is owned by the State, it is always open for the

respondents to identify the surplus staff and issue orders by posting such surplus staff to the needy schools. It is submitted that following the guidelines issued by the Government in G.O.Ms.No. 103, dated 5-8-2005, surplus staff was identified and two Secondary Grade Teachers (Telugu) and one Secondary Grade Teacher (Kannada) were already allotted to the petitioner school and as such, the management of the petitioner-school cannot fill up those posts.

In this case it is not in dispute that there are 47 posts in the petitioner-school, which were admitted to grant in aid. Certain posts in the petitioner school have fallen vacant during the period from 1-7-1997 to 1-7-2002. Once the posts are admitted to grant in aid, it implies that there is need for such posts to run the school. Having admitted to grant in aid, there is no reason to keep the said posts vacant for indefinite period. In this case, on the application of the petitioner, the fourth respondent-competent authority has already issued orders dated 9-7-2003 and 6-11-2003 to fill up all the vacant posts, except the post of Telugu Pandit Grade-II. Though orders were issued on 13-8-2005 by the fourth respondent appointing a nominee to constitute Selection Committee and to proceed with the selection, but however, the said process was stalled on account of the steps which were taken to rationalize the staff and shift the surplus staff to the needy schools. In similar situation, when the posts were not being filled up based on the orders issued by the Government in Memo dated 20-10-2004 by imposing ban on filling up the vacant aided posts and on account of steps being taken for rationalization, the matter was considered by a Division Bench of this Court in Writ Appeal No. 1578 of 2005 and Batch. With regard to imposition of ban, the Division Bench held that when the orders are issued by the competent authority granting

permission prior to the issuance of the Memo dated 20-10-2004, it is open for the managements to proceed with the process of filling up of posts. In the case on hand, the competent authority had issued orders dated 9-7-2003 and 6-11-2003 to fill up all the vacancies except the post of Telugu Pandit Grade-II. Even the posting of Secondary Grade Teachers in Telugu and Kannada appears to be on account of identification following the guidelines issued by the Government in G.O.Ms.No.103, dated 5.8.2005 for the purpose of rationalization of staff. In the judgment referred above, a Division Bench of this Court has held that the exercise of rationalization undertaken by the respondents was not in accordance with the rules framed under the A.P.Education Act. But at the same time, it was observed by the Division Bench that it is open to take up fresh exercise for rationalization, which may lead to declaration of some teachers as surplus and absorption of surplus teachers in needy schools. In view of the judgment of the Division Bench of this Court, stated supra, the argument of the learned Government Pleader appearing for the respondents that the petitioner management cannot fill up the two Secondary Grade Teachers (Telugu) and one Secondary Grade Teacher (Kannada), in view of the rationalization undertaken by the respondents cannot be accepted. Further, in this case the orders were issued by the competent authority on 9-7-2003 and 6-11-2003 permitting the petitioner management to fill up all the posts except Telugu Pandit Grade-II. Having permitted to fill up the vacancies, there appears no reason in not allowing the petitioner management to proceed with the selection. As much as the Division Bench of this Court in the judgment supra kept open to take up fresh exercise of rationalization, I dispose of the Writ Petition with the following directions:

1. The orders issued by the District Educational Officer, Kurnool District, dated 19-11-2005 in proceedings Rc.No.1/Raltionlization/B6/2005, posting of Two Secondary Grade Teachers (Telugu) and one Secondary Grade Teacher (Kannada) to the petitioner school are hereby stand quashed.
2. For filling up of the vacancies of Secondary Grade Teachers in Telugu and Kannada in the petitioner school, it is open for the respondents to post suitable persons by identifying surplus staff in other schools within a period of six weeks from the date of the receipt of a copy of this order.
3. Failing to fill up the said posts by the respondents within the period of six weeks as directed above, the respondents shall depute a nominee to the Selection Committee to fill up all the posts covered by the orders dated 9.7.2003 and 6.11.2003 issued by the District Educational Officer, Kurnool and also the posts of Secondary Grade Teachers in Telugu and Kannada within a period of three months from the date of the receipt of this order.
4. So far as the existing vacant post of Telugu Pandit Grade-II is concerned, it is open for the petitioner to file appropriate application before the competent authority seeking to fill up the said vacancy and if such an application is filed, respondents shall consider and pass appropriate orders on the application filed by the petitioner.

Subject to the above directions, the Writ Petition is disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 11th April, 2007.
Msnr